



U. S. Fish and Wildlife Service

Marine Mammal Protection Act Incidental Take Regulations for the Florida Manatee Frequently Asked Questions

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Q1: What is the Marine Mammal Protection Act?

A1: The Marine Mammal Protection Act (MMPA) of 1972, as amended, (16 U.S.C. 1361-1407) was enacted to provide Federal protection of all marine mammals and specifically contains a moratorium on the taking and importation of marine mammals with certain exceptions.

Q2: What is “take”?

A2: “Take”, as defined by the Marine Mammal Protection Act section 3(13), means “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.” Our implementing regulations (50 CFR 18.3) further clarify “take” as to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal, including, without limitation, any of the following: The collection of dead animals or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in the disturbing or molesting of a marine mammal. “Harassment” is defined under the MMPA as any act of pursuit, torment, or annoyance which: (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to migration, breathing, nursing, breeding, feeding, or sheltering. You can find other relevant definitions at 50 CFR 18.27(c).

Q3: What are the Incidental Take Regulations?

A3: One of exceptions to the prohibition against take provided by the MMPA is contained in Section 101(a)(5)(A). This section authorizes us, on request, to allow for a specific activity (other than commercial fishing) in a specific geographical region the incidental, unintentional take of small numbers of a species or stock of marine mammals if certain findings are made and regulations prescribed. In order to do this, we must find that the total effect of such taking during the specified time period (of up to five years) will have a negligible impact on the species or stock and will not have an unmitigable impact on the availability of such species or stock for subsistence uses. If we make such a finding then we must prescribe regulations setting forth the details associated with such taking and establishing the requirements for monitoring and reporting take of the species.

Q4: Why are you proposing these Incidental Take Regulations?

A4: Development of Incidental Take Regulations allow other Federal agencies, State and local governments that conduct activities that may cause take of manatees to work with the us to receive authorization for that take if we can show that mutual efforts by all participants in the process will minimize take to a negligible

level. The MMPA regulations would pull together local, State and Federal manatee conservation efforts; thereby improving manatee protection while providing more efficient and predictable regulatory programs for watercraft-related activities.

Q5: What is your legal authority to establish these Incidental Take Regulations?

A5: Our legal authority stems from the MMPA of 1972, as amended, (16 U.S.C. 1361-1407) as implemented under 50 CFR 18.27.

Q6: What specified activities would this rule cover?

A6: The proposed regulations address incidental, but not intentional, take of manatees resulting from Federal, State and local government activities related to watercraft and watercraft access facilities including: (1) regulating the operation of watercraft and boater behavior on Florida waters (e.g., speed zones); (2) permitting construction of watercraft access facilities (marinas, docks, boat ramps); (3) funding construction of watercraft access facilities; (4) operating watercraft access facilities; and (5) operating government-owned watercraft for official government business.

Q7: In what specified geographic region would this rule apply?

A7: This rule applies to the specified geographic area defined by the species' range within the state of Florida, subdivided into three regions: (a) the Northwest Stock, consisting of the counties along the Gulf of Mexico from Escambia County east and south to Hernando County, Lafayette and Gilchrist counties, and Marion County adjacent to the Withlacoochee River; (b) the Upper St. Johns River Stock, consisting of Putnam County from Palatka south; Volusia, Flagler, and Marion counties adjacent to the St. Johns River or its tributaries; and Lake and Seminole counties; and (c) the Atlantic Stock, consisting of counties along the Atlantic coast from Nassau County south to Miami-Dade County, the portion of Monroe County adjacent to the Florida Bay and the Florida Keys, Okeechobee County, and counties along the lower portion of the St. Johns River north of Palatka, which includes Putnam, St Johns, Clay and Duval counties.

A fourth region, the Southwest Stock, is excluded from this rule. The Southwest Stock consists of the counties along the Gulf of Mexico from Pasco County south to Whitewater Bay in Monroe County and DeSoto, Glades, and Hendry counties.

Q8: What is the process for receiving MMPA Incidental Take Authority?

A8: First, you must be a Federal, State, or local agency conducting activities related to the operation of watercraft or watercraft access facilities in the geographic area described in A7 above that may take a Florida manatee in execution of those activities. An application for each activity the agency proposes to conduct is required and should be submitted to our Jacksonville Field Office at least 90-days prior to the start of the proposed activity. The Service will review the application and, if approved, issue a Letter of Authorization to the agency.

Q9: What should the agency's Letter of Authorization application contain?

A9: Applications for a Letter of Authorization must include the following information:

- a description of the specific activity or class of activities that can be expected to result in the incidental take of manatees;

- the dates and duration of such activity and the specific geographical region where it will occur;
- the anticipated impact of the activity to the Florida manatee;
- the anticipated impact of the activity to manatee habitat and the likelihood of restoration of the affected habitat;
- the anticipated impact of the loss or modification of manatee habitat;
- the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting such activity or other means of effecting the least practicable adverse impact on the manatee and its habitat;
- suggested means of accomplishing the necessary monitoring and reporting; and,
- suggested means of encouraging and coordinating research opportunities, plans, and activities to reduce such incidental take.

Q10: What criteria will the Service use to evaluate Letter of Authorization requests?

A10: We propose to determine whether the level of activity identified in the request exceeds that considered by us in making a finding of negligible impact on the species. If the level of activity is greater, we will re-evaluate our findings to determine if those findings continue to be appropriate based on the greater level of activities. Depending on the results of the evaluation, we may allow the authorization to stand as is, add further conditions, or withdraw the authorization.

Q11: What will the agency's Letter of Authorization allow?

A11: Depending on the agency's application for incidental take authority, the Letter of Authorization would allow the incidental, but not intentional, take of Florida manatee when the agency carries out one or more of the following activities within the specified geographic region defined in A7 above: regulating the operation of watercraft, including government programs responsible for the establishment of watercraft speed zones and restricted access areas for manatee protection, programs that register watercraft for operation, and programs that authorize marine events (*e.g.*, high speed races, parades, and other events); regulating the location and construction of watercraft access facilities including boat ramps, marinas, private and public boats, and other such structures that provide watercraft access to waters inhabited by manatees; financing, in whole or in part, construction of watercraft access facilities with government funds; operating government-owned or controlled facilities that provide watercraft access; and operating government-owned or controlled watercraft for official government business other than that covered under section 109(h) of the MMPA, which identifies situations in which Federal, State, and local government officials may take a marine mammal in the course of his or her official duties.

The agency would be expected to conduct methods and activities identified in its Letter of Authorization in a manner that minimizes to the greatest extent practicable adverse impacts on Florida manatee and their habitat.

Each Letter of Authorization would identify allowable conditions or methods that are specific to the activity and location.

Q12: What activities would be prohibited?

A12: Agencies would not be permitted to intentionally take Florida manatee under these regulations. However, under section 109(h)(1) and section 101(c) of the Marine Mammal Protection Act, the Service may authorize intentional take (*e.g.*, harassment associated with deterrent activities, and taking in defense of

self or others).

Letters of Authorization would prohibit any take that fails to comply with the terms and conditions of these specific regulations.

Additionally, this rule would not authorize the incidental take of Florida manatee during the illegal or reckless operation of watercraft or unauthorized construction of watercraft access facilities.

Q13: What monitoring and reporting requirements are you proposing?

A13: We propose to require holders of Letters of Authorization to cooperate with us and other designated agencies to monitor the impacts of activities related to watercraft operation and watercraft access facilities on Florida manatee. Holders of Letters of Authorization would be required to designate a qualified individual or individuals to observe, record, and report the effects of their activities on Florida manatee. In addition, we will review these Letters of Authorization every year.

Q14: What mitigating measures can government agencies implement which could reduce incidental take to the negligible impact level?

A14: We have identified five categories of mitigating measures that government agencies can implement to reduce and control watercraft-related incidental take. These include: (1) establishment of speed zones and protected areas to control watercraft speeds and/or restrict access to areas of importance to manatees; (2) law enforcement to ensure compliance with restrictions established pursuant to (1); (3) education to improve public understanding of manatee conservation needs and enhance compliance with manatee protection measures; (4) review of proposals to construct watercraft access facilities with a view toward minimizing the effects of such facilities on manatees and manatee habitat; and (5) other measures that are available or may become available over the period of this rule. Although the categories vary in terms of their relative effectiveness, they cannot be viewed as completely separate measures because the effectiveness of each depends on others. For example, speed zones must be enforced and the public must be informed and educated about the zones through appropriate signage and outreach in order for the zones to provide effective protection of manatees.

Q15: What effect will the negative finding for the Southwest stock have on businesses and individuals in the counties impacted by the finding?

A15: Due to the negative finding of negligible impact under the MMPA in the Southwest Stock, the Service will review and comment on Corps permit applications for watercraft access facilities on a case-by-case basis to determine whether construction and/or use of a particular facility is reasonably certain to directly or indirectly result in the incidental, unintentional take of manatees in the Southwest Stock.

When the Service concludes that a “may likely to adversely affect” on a permit application, and that incidental take of manatees is likely to result, the Service will not be able to authorize the incidental take of manatees through the ESA section 7 consultation process, and will recommend that the permit application be denied in order to prevent unauthorized take of manatees. It is, therefore, likely that some watercraft access related facilities in the Southwest Stock will not be permitted and constructed in the Southwest Stock.

However, in cases where the Service concludes that adequate manatee protection measures are in place and incidental take is not reasonably certain to occur, the Service will not recommend the permit application be denied. In these instances, the Corps will determine whether these permits will ultimately be issued based

on their Public Interest review process for the section 10/404 Regulatory Program.

Q16: How will the negative finding for the Southwest stock impacted single-family docks?

A16: The Service anticipates that the review process for single-family docks in the Southwest Stock will likely change due to fact that this stock is currently above the negligible impact level and the incidental take of manatees cannot be authorized. In this area, single-family docks will be reviewed on a case by case basis. The change in this area reflects the need to review all water craft access projects, including single-family docks.

Q17: How long will this negative finding be in place?

A17: The Service believes that the watercraft access permit review process in the Southwest Stock will almost certainly change during the five-year life of the rule. The Service intends to frequently revisit the designations of “adequate/inadequate” protection areas to insure they are reflective of manatee distribution, mortality, and demographic data, as well as changes in ongoing manatee protection programs. If additional manatee protection programs reduce the incidental take of manatees associated with new watercraft access facilities in reaches in the Southwest Stock, the number of Service recommended permit application denials will likely decline. Conversely, if data indicate an increase in the rate of incidental take of manatees in the Southwest Stock and a decline in the overall health of the manatee population in this stock, the number of Service recommended permit denials may increase.

Q18: Is there anything private businesses and individuals can do to help change the situation in the Southwest stock counties?

A18: Yes, we encourage private businesses and individuals to work with the local State and county agencies in developing comprehensive Manatee Protection Plans. We also encourage all Stakeholders to review the proposed regulations and provide additional ideas, suggestions, data sets or comments which might help us in refining our analysis of the Southwest Stock's status. In addition, individuals need to be aware of manatee speed zones and protected areas to ensure they are complying with all speed zones and other efforts to protect manatees.

Q19: Are these Incidental Take Regulations going to affect my recreational or commercial use of Florida's waterways?

A19: Not directly. The promulgation of Incidental Take Regulations will not change any of the laws, regulations or procedures currently in place by which local, State, and Federal governments regulate watercraft-related activities. However, once the regulations are in place, agencies wishing to obtain authorization for take under the regulations may need to modify their regulatory programs in order to ensure that incidental take of manatees resulting from those programs is minimized to the negligible level in accordance with the Incidental Take Regulation.

Q20: Are these Incidental Take Regulations going to affect my ability to build a dock or boat ramp on my private property?

A20: Maybe. As stated above, the promulgation of Incidental Take Regulations will not change any of the laws, regulations or procedures currently in place by which local, State, and Federal governments regulate watercraft-related activities, including permitting of watercraft access facilities (docks, boat ramps, marinas,

etc.). These regulatory programs currently restrict, or prohibit, construction of watercraft access facilities in certain cases, including projects that would result in incidental take to manatees. However, if an agency that administers a permit program seeks a Letter of Authorization under these regulations, they may need to alter their procedures to ensure that incidental take associated with permits issued under that program has a negligible impact on manatees. This could result in additional requirements and conditions being placed on permit applicants.

Q21: Are these special regulations going to affect access to my property?

A21: No. These proposed regulations would not prohibit anyone from accessing their property by boat, or from developing and using their property in ways that are not already restricted or prohibited.

Q22: What is an Environmental Impact Statement?

A22: This Draft Environmental Impact Statement (DEIS) documents the Service's evaluation of the environmental effects of a proposed action, in this case the Marine Mammal Protection Act (MMPA) incidental take regulations. It also provides information on our evaluation of alternatives for structuring and implementing the proposed regulations.

Q23: Will the public be given an opportunity to participate in this process?

A23: Yes. We will consider comments on both the proposed rule and the draft environmental impact statement that are received within 60-days of the Proposed Regulations' publication in the *Federal Register*. We will hold six public hearings as follows: on December 2, 2002, at the Harborside Convention Hall, 1375 Monroe St., Ft. Myers; on December 3, 2002, at the Holiday Inn & Conference Center, 4732 N Dale Mabry Hwy, Tampa; on December 4, 2002, at the Radisson Hotel & Conference Center, 3101 N. Highway A1A, Melbourne; on December 5, 2002, at the Daytona Beach Resort & Conference Center, 2700 N. Atlantic Ave., Daytona Beach; on December 9, 2002, at the Holiday Inn, 201 N. 1st St., Palatka; and on December 10, 2002, at the Doubletree University Florida Hotel & Conference Center, 1714 SW 34th St., Gainesville. All hearings will run from 6 p.m. to 9 p.m. We will hold additional public hearings if requested.

Q24: What type of information are you looking to receive from the public regarding these proposed regulations and finding?

A24: Public input is being sought on the overall impact of these proposed regulations. Specifically, we are seeking: (1) information regarding manatee population studies/data, particularly for the Southwest Stock; (2) information regarding mitigating measures, including technological measures, that would result in the least practicable impact on manatees and their habitat; (3) information regarding the effectiveness of mitigating measures currently in place; (4) information regarding the potential social and economic effects of the proposed regulations; (5) information regarding means of minimizing potential social and economic effects of the negative finding for the Southwest Stock; (6) suggested means and measures to report and monitor the effects of incidental take on manatees; and (7) nominations for participants to serve on the Working Group on Watercraft-related Incidental Take.

Q25: Does the Service consider economic and quality of life impacts on citizens when developing these Incidental Take Regulations?

A25: Yes. The determination regarding what level of incidental take would result in a negligible impact to manatees is solely biologically based. However, we always consider the impact on local economies and

public quality of life when making decisions which will result in additional regulations, per the requirements of applicable Federal laws, policies and Executive Orders, including but not limited to the National Environmental Policy Act, Regulatory Flexibility Act, and Small business Regulatory Enforcement Flexibility Act.

Q26: Are you singling out watercraft as the primary cause of manatee mortality?

A26: No. We acknowledge that watercraft-related mortality is not the only cause for manatee deaths. It is, however, the number one cause of human-related deaths and development of these regulations offer us an opportunity to implement sound, effective, risk-reduction management actions. Adult survival rates are one of the key criteria we consider in gauging success of our recovery efforts, and implementation of these special regulations will address some of the human actions which may affect this rate.

Q27: What percentage of boat mortality will be addressed by these Incidental Take Regulations?

A27: The Incidental Take Regulations are not designed to target a specific percentage of manatee mortality. They are instead intended to provide specific authorization within precise guidelines for government agencies to allow certain actions which would otherwise be prohibited.

Q28: Are you coordinating development of these Incidental Take Regulations with the State?

A28: Yes, we continue to work closely with state and local agencies on all aspects of manatee recovery including these regulations.

Q29: I thought you were already designating additional manatee protection areas, do we really need these additional Incidental Take Regulations?

A29: Manatee protection areas are one tool we have for addressing watercraft-related injury and harassment of manatees. These Incidental Take Regulations are broader in scope and provide the framework within which to address the effects of all government activities related to watercraft. Thus the two actions are independent, but related in that both address human actions which impact the Florida manatee.

Q30: How is the settlement between the Save the Manatee Club, et. al., a number of boating and development interests, the U.S. Fish and Wildlife Service, and the Army Corps of Engineers impacting this process?

A30: In the settlement, we agreed to a time frame for announcing our Incidental Take Regulation development process, as well as for preparing the rule. We identified the need for these Incidental Take Regulations and preliminary planning was already underway before the lawsuit was filed.

Q31: What is the final status of litigation between the Save the Manatee Club and the state of Florida?

A31: Please contact the Florida Fish and Wildlife Conservation Commission or Save the Manatee Club for information related to the State lawsuit and settlement.

Q32: How will these Incidental Take Regulations be enforced?

A32: The regulations will be enforced through the issuance of Letters of Authorization. Any action contrary

to the terms of the Letter of Authorization could result in the loss of liability protection and possible withdrawal of the LOA.

We propose to make decisions concerning withdrawals of Letters of Authorization, either on an individual or class basis, only after notice and opportunity for public comment. However, this requirement would not apply should we determine that an emergency exists that poses a significant risk to the well-being of the Florida manatee.

Q33: Since the state of Florida's 2001 manatee count was higher than expected, why is the Service proceeding with the Incidental Take Regulations?

A33: We are very pleased with this year's count and see these numbers as indicative of the success of many long-term conservation efforts. However, manatees are protected under both the Endangered Species Act and the MMPA, both of which prohibit take of protected species unless otherwise authorized.

Q34: When will your final Incidental Take Regulations be published?

A34: After the close of the public comment for these proposed regulations, we will review the comments and recommendations received, and revise the proposed regulation accordingly. The rule will then be finalized in May 2003.

Q35: Will these Incidental Take Regulations mean added costs to permit applicants?

A35: Possibly, the form the regulations will take, including decisions regarding how the regulations will be implemented will be determined through the rulemaking process.

Q36: What are the next steps in the process?

A36: We will take into consideration all comments and any additional information received during the public comment period for the proposed rule. We will then publish our final rule in the *Federal Register*.

Q37: How can I stay up to date with this issue?

A37: Throughout the process we will continually update our website with current information relative to each step of the rulemaking process. The website will also have the capacity to accept your comments electronically. Our website is located at <http://northflorida.fws.gov>. You may also request to be added to our mailing list by writing to: Manatee Mailing List, U.S. Fish and Wildlife Service, Jacksonville Field Office, 6620 Southpoint Dr., South, Suite 310, Jacksonville, FL 32216 or via e-mail to manatee@fws.gov.